

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-30111-MAP

JAMES V. CARIDDI,
Plaintiff

v.

CONSOLIDATED ALUMINUM CORPORATION,
Defendant

**MOTION OF DEFENDANT CONSOLIDATED ALUMINUM CORPORATION
FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendant Consolidated Aluminum Corporation ("Conalco") hereby moves for Summary Judgment in it's favor as to all counts of the Complaint asserted against it by the Plaintiff, James V. Cariddi ("Mr. Cariddi") in which Mr. Cariddi seeks payment from Conalco of his costs for environmental response actions associated with the alleged oil and/or hazardous substance contamination at his property pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") ("CERCLA") 42 U.S.C. § 9601 *et seq.* and state law, M.G.L. c. 21E.

As grounds for this Motion, Conalco states that Summary Judgment should be granted because the undisputed material facts demonstrate that (a) Plaintiff's claims under CERCLA are barred because the contamination found on the subject premises fall squarely within CERCLA's so-called petroleum exclusion and (b) Plaintiff can not establish an essential element of his claim as required under M.G.L. c. 21E, § 5(a)(5); namely, duty and breach.

As further grounds for this Motion, Conalco relies upon the Memorandum of Law in Support of Defendant Consolidated Aluminum Corporations Motion for Summary Judgment and

the attached Affidavits of Lawrence Feldman, LSP, Ph.D.; Michael J. Wade, Ph.D.; and Robert D. Cox, Jr., Esquire.

WHEREFORE, the Defendant, Consolidated Aluminum Corporation, requests that this Court enter Summary Judgment for the Defendant on Plaintiff's Complaint.

CONSOLIDATED ALUMINUM CORPORATION
By its attorneys,

/s/ Robert D. Cox, Jr.

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Dated: January 20, 2006

CERTIFICATE OF SERVICE

I, Robert D. Cox, Jr., hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on January 20, 2006.

/s/ Robert D. Cox, Jr.